

AMENDED IN ASSEMBLY MAY 20, 2009

AMENDED IN ASSEMBLY APRIL 30, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 653

Introduced by Assembly Member Feuer

February 25, 2009

An act to add Article 5.5 (commencing with Section 988) to Chapter 4 of Division 8 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 653, as amended, Feuer. Evidence: marital privilege.

Existing law provides that a spouse has a privilege during the marital relationship and afterwards to refuse to disclose, and to prevent another from disclosing, a communication if the spouse claims the privilege and the communication was made in confidence between the spouses while they were husband and wife. A married person also has a privilege not to testify against his or her spouse in any proceeding and, when the spouse is a party to a proceeding, a privilege not to be called as a witness by an adverse party to that proceeding without the prior express consent of the spouse having the privilege.

This bill would provide that a peace officer who asserts any of the marital privileges described above shall not be subject to administrative discipline for failure to report information to his or her supervisor or department, except when the information concerns criminal or certain other conduct of the peace officer's spouse, who is also a peace officer employed by the department, and other specified conditions apply.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares that the
2 time-honored privilege not to testify against one's spouse is
3 grounded on the premise that compelled testimony of a spouse
4 would, in many cases, seriously disturb if not completely disrupt
5 the marital relationship (People v. Sinohui (2002) 28 Cal.4th 205).
6 As the California Law Revision Commission has commented with
7 respect to Section 970 of the Evidence Code, society generally
8 stands to lose more as the result of that disruption than it stands
9 to gain from the testimony that would be available if the privilege
10 did not exist.

11 (b) It is the intent of the Legislature that this act shall apply only
12 to administrative disciplinary investigations and hearings, and not
13 to other civil or criminal proceedings. It is the further intent of the
14 Legislature to overrule Riverside County Sheriff's Dept. v. Zigman
15 (2008) 169 Cal.App.4th 763 to the extent that it is inconsistent
16 with this act.

17 SEC. 2. Article 5.5 (commencing with Section 988) is added
18 to Chapter 4 of Division 8 of the Evidence Code, to read:

19
20 Article 5.5. Marital Privilege in Peace Officer Administrative
21 Disciplinary Investigations and Hearings
22

23 988. (a) A peace officer who asserts the privilege of a spouse
24 under Section 970, 971, or 980 to refuse to testify or be called as
25 a witness against his or her spouse, or to disclose confidential
26 marital communications, shall not be subject to administrative
27 discipline for failure to report information to his or her supervisor
28 or department, except when all of the following are true:

29 (1) The information concerns conduct of the peace officer's
30 spouse, who is also a peace officer employed by the same
31 department, that is criminal or a serious violation of department
32 policy punishable by a suspension of 15 days or more, or subjects
33 the department to a specific and significant risk of civil liability.

34 (2) The interests of justice require disclosure of the information
35 because, after exercising reasonable diligence, independent

1 evidence does not otherwise appear to be reasonably available to
2 proceed with an administrative disciplinary investigation or
3 hearing.

4 (3) The sheriff or chief of police personally approves the
5 discipline *in writing* despite the assertion of the marital privilege.

6 (b) This section does not apply if the peace officer is a percipient
7 witness to the misconduct at issue.

8 (c) Nothing in this section shall impair any right or privilege
9 pursuant to a memorandum of understanding between a department
10 and a certified bargaining unit representing peace officers, or limit
11 their ability to negotiate and agree to a higher standard of rights
12 or privileges.